

**Massachusetts Workers' Compensation  
Advisory Council Minutes**

Department of Industrial Accidents  
600 Washington Street, 7<sup>th</sup> Floor  
Boston, MA 02111

**Present:** Chairman Paul Byrne; Vice-Chairman Thomas Jones. CM: Edmund C. Corcoran; Jeanne-Marie Boylan; Tony Frias (Ines Leonardo); Peter A. Cook; Robert Banks (William Corley); Ken Paradis; John D. Boyle (Teri A. McHugh); Jill Brown; Gayl Mileszko, Director of Labor; Peter Scantalides, Department of Business & Technology.

**Also Present:** DIA: Commissioner Henry Swiniarski; Jack Tynan, Deputy Commissioner of Administration; Greg White, Deputy Commissioner/General Counsel; James LaMothe, Senior Judge; Jack Defina, Chief Financial Officer; William Taupier, Deputy Director of Administration and EDP; David J. O'Donnell, Chief of Staff, Department of Labor; Michael Kelly, AIM Mutual Insurance Company; Anthony Salido, WCRIBM; Jessica Stanton, WCRIBM; Karen Shandley, Cook & Company; John Keefe, Tentindo, Kendall, Canniff & Keefe.

**Advisory Council Staff:** Andrew Burton; Evelyn Flanagan.

**Absent:** CM John Pulgini; Mickey Long.

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*Agenda:*

Chairman's Welcome

*DIA Update*

Judicial Update - James LaMothe, Senior Judge

Action Items

- Minutes - October 11, 2006
- Minutes - November 13, 2006

Fiscal Year 2006 Concerns & Recommendations

## Executive Director Update

### Miscellaneous

#### **CHAIRMAN'S WELCOME**

Chairman Paul Byrne began today's meeting at 10:00 a.m. Chairman Byrne congratulated Senior Judge LaMothe on his appointment to the position of Associate Justice of the Peabody District Court. Upon receiving recognition from Council Members, Chairman Byrne requested that Senior Judge LaMothe provide the Council with his judicial update. Senior Judge LaMothe thanked Council Members for the service that they provide to the workers' compensation system.

#### **DIA UPDATE**

##### Judicial Update

Senior Judge James LaMothe updated Council Members on the information contained within the DIA's vital statistic report for December of 2006 (see attached). Conference Queue: 596; Hearing Queue: 1,305; Reviewing Board Inventory: 118; Impartial Exams for FY'07 (to date): 2,024 (153 waivers). In fiscal year 2006 there were 5,374 Impartial Medical Examinations (95 waivers).

Senior Judge LaMothe reported that the December hearing queue was down slightly compared to the November figure of 1,310. He explained that ideally the hearing queue should be 1,500 cases and the conference queue should be approximately 500 cases. The Senior Judge stated that there were currently 19 active Administrative Judges (AJs). He noted that his AJ position would become vacant upon his departure and that Judge Constantino intends to retire as an AJ in June.

##### Stop Work Orders/Caseload Statistics

Mr. Taupier updated Council Members on the Stop Work Order (SWO) and Caseload Statistics for November of 2006 (see attached). SWO compliance and fine collection remains at 100%. Total compliance investigations initiated during November: 1,969; total investigations for FY'07: 9,766; total investigations for FY'06: 23,118; total SWOs issued in November: 61; total SWOs issued for FY'07 (to date): 166; total number of SWOs issued for FY'06: 228; total fines collected for November: \$18,600; total fines collected in FY'07 (to date): \$103,849; total fines collected in FY'06: \$230,465. The large number of SWOs for November is due primarily to a four-day regional sweep of Lawrence which resulted in 44 SWOs.

Mr. Taupier continued his update of the monthly vital statistics. Total number of cases filed for November: 1,492; total number of cases filed for FY'07 (to date): 6,449; total number of cases filed for FY'06: 15,957;

total number of First Reports filed for November: 2,997; total number of First Reports filed for FY'07 (to date): 14,488; total number of First Reports filed for FY'06: 36,590; total number of First Reports filed online for November: 767 (26%). For FY'06, a total of 9,405 First Reports were filed online using the DIA's Information Portal on the Internet (25.7% of FRI filings).

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims processed for FY'07 to date: 96; total amount of §65 claims paid by the Trust Fund for fiscal year 2007 (to date): \$2,273,255; total number of §65 claims filed for FY'06: 245; total amount of §65 claims paid by the Trust Fund for fiscal year 2006: \$6,647,480.

**Vice-Chairman Thomas Jones requested that the DIA add the projected budgeted amount for §65, §37/37A, and COLAs to the graphs on the Vital Statistic Report.**

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Number of §37/37A petitions paid in fiscal year 2007 (to date): 391; amount paid on these claims in fiscal year 2007: \$11,556,159; number of §37/37A petitions filed in fiscal year 2006: 490; amount paid on these claims in fiscal year 2006: \$18,539,957; monies recovered by Trust Fund in FY'07 (to date): \$539,276; monies recovered in FY'06: \$1,443,520; COLA reimbursements to insurers in FY'07 (to date): \$310,362; COLA reimbursements to insurers in FY'06: \$23.3 million.

#### Budget/Personnel Issues

Mr. Taupier reported that as of November 2006, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 263 (229 DIA employees, 34 WCTF employees). The DIA has no contract employees at this time. Twelve (12) temporary employees are being utilized within the DIA as of this report. The Office of Legal Counsel is also utilizing the services of 4 legal interns. Each intern works on a part-time basis (the total hours each week add up to one position).

#### **ACTION ITEMS**

Chairman Byrne asked for a motion to accept the Minutes for October 11, 2006. Motion made to accept the Minutes for October 11, 2006. MMS - Passed.

Chairman Byrne asked for a motion to accept the Minutes for November 13, 2006. Motion made to accept the Minutes for November 13, 2006. MMS - Passed.

#### **FISCAL YEAR 2006 CONCERNS & RECOMMENDATIONS**

The Executive Director, Andrew Burton, explained that the Advisory Council needs to determine which concerns and recommendations would be included in the Fiscal Year 2006 Annual Report. Mr. Burton

stated that the concerns and recommendations should highlight areas in the workers' compensation system that are in need of attention and set the agenda for the Advisory Council for the coming year. The Executive Director highlighted various topics that were discussed by the Advisory Council during the last year (see attached).

#### Employer Fraud - Uninsured Employers

The first concern and recommendation discussed was in regards to employer fraud. Mr. Burton stated that a subcommittee had been formed in September to address this problem.

The Executive Director reported that over the last ten years, the Trust Fund had paid out \$52 million to uninsured employers, but had only collected \$11 million from reimbursements. Mr. Burton explained that there is no "silver bullet" that will force employers to purchase workers' compensation insurance. He suggested that any solution to curb employer fraud must be multifaceted and include both legislative and non-legislative solutions, which include the following:

1. Develop a "White Paper" framing the issue and outlining the seriousness of the problem.
2. Support through the House 1 Budget Process, increasing both the number of investigators and staffing levels for the Trust Fund.
3. Continue to garner support for legislative initiatives such as the Private Right of Action Bill (S.1099) and the Suspension of Driver's License Bill (House Docket 4709).
4. Amend legislation to strengthen the criminal penalties reserved for the most flagrant violations of the law. Institute a minimum-mandatory fine coupled with a provision that allows the DIA to recoup a percentage of the premium avoided.
5. Form a partnership with the Workers' Compensation Rating & Inspection Bureau of Massachusetts in developing an online tool that allows the general public to verify whether a specific company has workers' compensation insurance.

Vice-Chairman Tom Jones suggested that the DIA work with the Advisory Council on developing a one or two-page paper highlighting consequences of employer fraud. Vice- Chairman Jones stated that the paper could be used to educate both the legislature and the judges in the Commonwealth.

Council Member Jeanne-Marie Boylan suggested that a strong statement be made supporting an increase in both the number of investigators and staffing levels for the Trust Fund. CM Boylan stated that

it was important to document this concern as strongly as possible in financial terms, as well as relaying the influential impact made by the presence of additional investigators.

#### Scar-Based Disfigurement Benefits

The next concern and recommendation discussed was in regards to adjusting specific benefits. The Executive Director explained that the Advisory Council supported scar-based disfigurement legislation in the 2005-2006 Legislative Session that compensated workers for all disfigurement, regardless of its location on the body. Mr. Burton stated that in 2000, Tillinghast was asked by the Advisory Council to estimate the impact to costs if scar-based disfigurement benefits were restored to their pre-1991 levels. The Executive Director noted that although Tillinghast had little data, they suggested that it would have a "relatively minimal impact on system costs."

Council Member Ed Corcoran stated that study was becoming outdated and suggested the Advisory Council perform a follow-up study to review the impact of legislative proposals.

Mr. Burton stated that the Advisory Council could recommend a new study to reassess the cost-impact of restoring scarring benefits with several maximum benefit scenarios. Council Members agreed.

#### Maximum Burial Allowance

The next concern and recommendation discussed was in regards to raising the maximum burial allowance. The Executive Director stated that the Advisory Council supported raising this benefit from \$4,000 to \$8,000 during the 2005-2006 Legislative Session. Mr. Burton explained that the National Funeral Director's Association had conducted a study in 2001 which estimated that the average burial cost in Massachusetts was \$6,177.

The Advisory Council Members agreed to continue supporting legislation to increase the maximum burial allowance from \$4,000 to \$8,000. Adequacy of IAB Medical Rates

The next concern and recommendation discussed was in regards to the adequacy of Industrial Accident Board Medical Rates. The Executive Director reviewed various problems that the Division of Health Care Finance & Policy (DHCFP) faces when attempting to set rates that accurately reflect costs incurred by health care providers to deliver medical services. Mr. Burton summarized a 2006 Workers' Compensation Research Institute study that analyzed the fee schedule in Massachusetts. The Executive Director stated that according to the report, workers, on average, reported better outcomes than states with higher fee schedules.

Mr. Burton suggested that the Advisory Council could continue to support the efforts of the Department of Labor and the DIA in coordinating dialogue between the medical community, insurance companies and the DHCFP to ensure that medical rates are fair and reasonable for all parties involved. Council Members agreed.

#### Strengthening Public Records Law to Protect Privacy of Injured Worker

The next concern and recommendation discussed was in regards to strengthen the public records law to protect the privacy of injured workers. The Executive Director reviewed the work of a subcommittee that was formed in June of 2006 to address the solicitation practices of a select group of law firms who were using the public records law to obtain the names and addresses of workers injured on the job. Mr. Burton reviewed prior legislation that had been filed by the Massachusetts Association of Insurance Agents (MAIA) and the history of a lawsuit filed against the DIA. Council Members suggested that this issue be brought to the attention of the Massachusetts Bar Association. The Advisory Council also recommended that the DIA work in conjunction with MAIA on developing new legislation to exempt from the public records law, the name, home address, and phone number of any injured employee reported to the DIA.

#### Increasing Safety for Teen Workers & High Risk Occupations - Safety Grants

The next concern and recommendation discussed was in regards to the safety grant program. The Executive Director reviewed the work of a subcommittee that was formed in April of 2006 to make improvements to the safety grant program. As a result of the subcommittee's work, the Office of Safety initiated a pilot project that focused the safety grant program towards high-risk industries. The Executive Director also reminded Council Members of the Safety meeting that was held at the DIA's Lawrence Regional.

Office in November. At this meeting, representatives from the Department of Public Health presented an overview of the injury statistics and unique risk factors that teen workers face in Massachusetts.

The Executive Director suggested that the Advisory Council make a recommendation that the DIA's Office of Safety expand outreach to get teen workers to benefit from the Safety Grant program. Furthermore, Mr. Burton stated the Advisory Council could recommend that the guidelines and administrative modifications used in the pilot project be fully incorporated into future grant programs. Council Members agreed.

#### Continuation and Automation of the Assessment Audit

The final concern and recommendation discussed was in regards to the continuation and automation of the assessment audit. The Executive Director provided a brief history of the assessment audit project. Mr. Burton stated that Phase I of the audits has resulted in the recovery of over \$9.5 million in underpaid assessments.

Council Members agreed that a recommendation in the annual report should strongly support the continued efforts of the DIA in verifying that insurance companies are collecting and submitting the proper assessment amounts from employers. Furthermore, Council Members were in agreement that a recommendation supports the agency's goal of developing an assessment payment process that is fully automated with insurance carriers.

Advisory Council Members requested the Executive Director to incorporate all the proposed concerns and recommendations discussed into the annual report. Mr. Burton stated that he would draft the concerns and recommendations and forward them to each member. Mr. Burton suggested that a telephone poll be taken during the first week in January for the final approval of the annual report.

### **MISCELLANEOUS**

Mr. Burton recognized Paul Byrne and Tom Jones for their leadership during the last four years serving as Chairman and Vice-Chairman. Chairman Byrne thanked all parties for attending today's meeting.

**The next regular meeting of the Advisory Council is scheduled for Wednesday, January 10, 2007, at 9:00 AM, at the Division of Industrial Accidents, 600 Washington Street, 7th Floor Conference Room, Boston, MA 02111.**